

## REMARKS

A final Office Action was mailed on December 23, 2003. Applicants file the present Preliminary Amendment together with a Request for Continued Examination and timely Petition for Extension of Time.

Claims 9 – 23, 38 and 40 are currently pending in the application, with claims 1 – 8 and 24 – 38 and 41 having been withdrawn from consideration. With this Amendment, Applicants cancel claims 1 – 8, 10, 24 – 38, 40 and 41 without prejudice or disclaimer, amend claims 9, 11, 12, 20, and 39, and add new claim 42. No new matter is added.

### REJECTION UNDER 35 U.S.C. § 103

Claims 9 – 23, 39 and 40 are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,644,724 to Cretzler in view of U.S. Patent No. 6,230,928 to Hanna et al. Applicants cancel claims 10 and 40 without prejudice or disclaimer, amend claims 9, 11, 12, 20, and 39 to clarify the nature of their invention, and respectfully traverse this rejection.

In amended independent claim 9, Applicants disclose a method for impounding escrow funds via electronic funds transfer (EFT) from credit/debit card transactions of a merchant that are transacted by the merchant at a merchant credit/debit card terminal for processing by an electronic funds processor (EFP). The claimed method includes steps of: a) receiving by the EFP a payment request by the merchant concerning one or more authorized transactions, b) determining by the EFP an escrow amount based on the one or more authorized transactions, c) crediting by the EFP an escrow account with the escrow amount,

and d) crediting by the EFP a merchant account with a net credit representing a sum of payments due concerning the one or more authorized transactions, reduced by the escrow amount.

Cretzler discloses a point-of-sale tax collection method and system by which a merchant may collect and store tax information associated with sales transactions. The system of Cretzler may periodically be accessed by a merchant bank for determining and making tax payments by wire transfer to various tax authorities (see, e.g., the abstract of Cretzler).

In the system of Cretzler, escrow information is processed and stored by a merchant in a specialized point-of-sale system, rather than being processed by an EFP in response to merchant transactions carried out in a conventional point of sale terminal. The Examiner acknowledges that Cretzler teaches a method by which the merchant pays tax amounts directly to tax authorities rather than by means of escrow funds placed in an escrow account by an EFP as taught by Applicants, but suggests that Hanna discloses a method that is similar to the method claimed by Applicants. Applicants respectfully disagree with this suggestion.

Hanna discloses an ATM merchant banking apparatus for use by a merchant to carry out banking transactions (see, e.g., the abstract of Hanna). The disclosed banking apparatus may include an application directed to escrow tax amounts for transfer to tax authorities from funds directly deposited by the merchant in the ATM apparatus (see, e.g., column 11, lines 46 – 59 of Hanna).

Unlike Applicants' claimed method, the escrow account credited by means of the apparatus of Hanna is not credited by an EFP in response to a credit/debit card transaction

payment request made by the merchant, but is rather credited by a merchant's bank in response to a receipt of funds directly deposited by the merchant in a merchant account.

The Examiner nonetheless suggests the differences between Applicants claimed method and the method disclosed by Hanna would have been obvious to one of ordinary skill in the art at the time of Applicants' invention, as each essentially teach using an entity other than the merchant for managing an escrow account. Applicants respectfully suggest that the differences between Applicants claimed method and the method disclosed by Hanna are in fact substantial.

In the case of Hanna, the merchant must manually deposit and designate funds for the escrow account. Thus, like Cretzler, Hanna requires significant participation by the merchant in receiving and managing funds to be used for this purpose.

In sharp contrast, according to Applicants' claimed method, the EFP directly credits the merchant's escrow account with funds based upon one or more authorized credit/debit transactions and a merchant payment request. In contrast to the methods effectively disclosed by Cretzler and Hanna, Applicants' escrow account is not credited with funds previously received by the merchant. Rather, an escrow amount is credited to the escrow account by the EFP without initial receipt by the merchant. Payments for authorized credit/debit transactions are subsequently received by the merchant from the EFP, debited by the escrow amount. Applicants' claimed method inserts the EFP to effectively eliminate merchant involvement in receiving and managing escrow funds associated with credit/debit transactions.

Accordingly, Applicants respectfully submit that the limitations of independent claim 9 are not disclosed or otherwise suggested by the combination of Cretzler and Hanna,

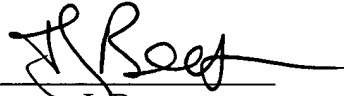
and that claim 9 therefore stands in condition for allowance. As claims 11 – 23, 39 and 40 each depend from allowable claim 9, Applicants respectfully submit that claims 11 – 23, 39 and 40 are allowable for at least this reason.

#### CONCLUSION

In view of the amendments and set forth above, this application is in condition for allowance which action is respectfully requested. However, if for any reason the Examiner should consider this application not to be in condition for allowance, the Examiner is respectfully requested to telephone the undersigned attorney at the number listed below prior to issuing a further Action.

Any fee due with this paper may be charged to Deposit Account No. 50-1290.

Respectfully submitted,



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